

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LEONARD WEST,
Petitioner,

v.

JAMEY LUTHER, et al.,
Respondents.

CIVIL ACTION
NO. 20-740

ORDER

AND NOW this 12th day of October, 2021, upon consideration of Leonard West's Petition for Writ of Habeas Corpus (ECF 1), Respondents' Response (ECF 14), the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells (ECF 15), Petitioner's Objection (ECF 18) and Respondents' Objection (ECF 22), and consistent with the accompanying Memorandum of Law, it is **ORDERED** that:

1. Respondents' Objection (ECF 19) is **SUSTAINED** and the Report and Recommendation is **NOT ADOPTED** with respect to West's first claim.
2. Petitioner's Objection is **OVERRULED** and the Report and Recommendation is **APPROVED** and **ADOPTED** with respect to West's second claim.
3. The Petition for a Writ of Habeas Corpus is **DENIED** and **DISMISSED** with prejudice;
4. A certificate of appealability shall **NOT ISSUE** because reasonable jurists would not debate West has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

It is **FURTHER ORDERED** that Petitioner's Motion for Default (ECF 30) is

DENIED. Because the Court does not adopt the Report and Recommendation with respect to West's first claim, there is no basis for a retrial or for his release from custody.

The Clerk of Court shall mark this case **CLOSED** for statistical purposes.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.